

DRAFT October 31, 2006

**COMMONWEALTH OF VIRGINIA  
WASTE MANAGEMENT BOARD  
CONSENT ORDER  
ISSUED TO  
SAFETY-KLEEN SYSTEMS, INC.**

**Section A: Purpose**

This is a consent order issued under the authority of §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 of the Code of Virginia (1950), as amended, by the Virginia Waste Management Board to Safety-Kleen Systems, Inc. to resolve certain violations of environmental laws and/or regulations at its facility in Vinton, Virginia.

**Section B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Safety-Kleen” means Safety-Kleen Systems, Inc., a Wisconsin corporation registered under Corporate I.D. No. F023270-4 in Virginia.

6. “Order” means this document, also known as a consent order.
7. “Regulations” means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* (“HWMR”). The specific provisions of Title 40 of the Code of Federal Regulations (“CFR”) cited herein are incorporated by reference at 9 VAC 20-60-260, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-268, and 9 VAC 20-60-270.
8. “RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*
9. “Regional Office” means the West Central Regional Office of the Virginia Department of Environmental Quality, which is located at 3019 Peters Creek Road, Roanoke, Virginia 24019.
10. “TSDf” means a permitted hazardous waste treatment, storage, and disposal facility, as described at 40 CFR Part 270.

### **Section C: Findings of Fact and Conclusions of Law**

1. The Safety-Kleen facility in Vinton, Virginia is a permitted TSDf registered under EPA ID No. VAD000737361. Safety-Kleen collects various hazardous and non-hazardous wastes, including waste paint, dry cleaner waste, and parts cleaner solvents from customers and transports these wastes to the Vinton facility for temporary storage pending transportation to other off-site TSDfs for disposal.
2. The Vinton Safety-Kleen facility has a 15,000-gallon above ground storage tank. Attachment CC of the facility TSDf permit requires periodical integrity assessments of the tank. The minimum shell thickness for the floor of the tank is specified in § CC.3.b of Attachment CC of the permit as 0.240 inch. The permit also requires that if the shell thickness falls below 0.240 inch, a complete assessment of the tank must be completed within three months.
3. On May 25, 2005, a consultant for Safety-Kleen inspected the tank at the Vinton facility. The consultant’s August 8, 2005 report indicated that the tank had stock side pits with depths of 0.050 to 0.090 inch, with a remaining floor shell thickness of as little as 0.160 inch.
4. DEQ staff inspected the Safety-Kleen facility in Vinton, Virginia on May 19, 2006. During the inspection, DEQ staff reviewed the consultant’s August 8, 2005 tank integrity assessment report.
5. The Safety-Kleen Vinton facility is required under 40 CFR § 264.142(b) to annually update its closure cost estimate and, if appropriate, the amount of its financial assurance. The annual financial assurance update for 2006 was due on July 31, 2006.

6. On August 16, 2006, the Department issued a Notice of Violation (“NOV”) to Safety-Kleen. The NOV alleged the following violations based upon the May 19, 2006 inspection and subsequent document reviews:

40 CFR § 270.30(a)	Compliance with all conditions of the permit
40 CFR § 264.142(b)	Failure to update financial assurance demonstration for closure (due 7/31/06)
Permit § IV.C.3 Permit Attachment II	Failure to complete an integrity assessment of the tank within three months of a determination that shell thickness falls below the thickness required by the permit.

7. DEQ received an updated financial assurance demonstration from Safety-Kleen on August 15, 2006. In a letter dated August 18, 2006, DEQ approved the financial assurance demonstration for the Safety-Kleen Vinton facility for period ending July 31, 2007.
8. In a letter dated September 14, 2006, Safety Kleen explained that the pits in the tank had been repaired on August 1, 2006. The letter also stated that the tank had subsequently been re-inspected and certified to be in compliance with industry standards by a professional engineer.

#### **Section D: Agreement and Order**

Accordingly, the Board, by virtue of the authority of Va. Code § 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 orders Safety-Kleen and Safety-Kleen voluntarily agrees to pay a civil charge of Nine Thousand Five Hundred Dollars (\$9,500.00) within 30 days of the effective date of this Order in settlement of the violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to “Treasurer of Virginia” and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, VA 23218

Either on a transmittal letter or as a notation on the check, Safety-Kleen shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

#### **Section E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Safety-Kleen, for good

cause shown by Safety-Kleen, or on its own motion after notice and opportunity to be heard.

2. This Order addresses only those violations pertaining to the facility specifically identified herein, including the violations specified in the Notice of Violation issued by the Department to Safety-Kleen on August 16, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Safety-Kleen admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Safety-Kleen consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Safety-Kleen declares that it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act, Code § 10.1-1400 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding, or to judicial review of, any action taken by the Board or the Director to enforce this Order.
6. Failure by Safety-Kleen to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Safety-Kleen shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, or other act of God, war, strike, or other such occurrences. Safety-Kleen must show that the circumstances resulting in the noncompliance were beyond its control and were not due to a lack of good faith or diligence on its part. Safety-Kleen shall notify the Director and the Director of the Department's West Central Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order.

Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;  
and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Department's West Central Regional Office within 24 hours of the commencement of the condition causing or anticipated to cause the delay or noncompliance shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. Any plans, reports, schedules or specifications attached hereto or submitted by Safety-Kleen and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall become effective upon execution by both the Director or his designee and Safety-Kleen. Notwithstanding the foregoing, Safety-Kleen agrees to be bound by any compliance date that precedes the effective date of this Order.
12. This Order shall continue in effect until either: a) Safety-Kleen petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of this Order, or b) the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Safety-Kleen. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Safety-Kleen from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. By the signature of an authorized official below, Safety-Kleen voluntarily agrees to the issuance of this Order.
14. The undersigned representative of Safety-Kleen certifies that he or she is a responsible

14. The undersigned representative of Safety-Kleen certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Safety-Kleen to this Order. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Safety-Kleen.

And it is so ORDERED this day of \_\_\_\_\_, 200\_\_.

Steven A. Dietrich, Regional Director  
West Central Regional Office  
Department of Environmental Quality

Seen and Agreed to: \_\_\_\_\_



Safety-Kleen Systems, Inc.

The foregoing instrument was acknowledged before me on November 28, 2006

by Virgil W. Duffie, III, Assistant General Counsel, on behalf of Safety-Kleen Systems,  
(name) (title) Environmental

Inc., in the County/City of Collin, State/Commonwealth of Texas.

  
Notary Public

My Commission expires: 3/23/08

